IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION LODGING NO.1350 OF 2006

Deepika Yogeshwar Nandanwar)
minor through father and)
natural guardianYogeshwar)
Sadashiv Nandanwar, residing)
at AD Bungalow, Dr.S.S. Road,)
Marg, KEM Hospital, Parel,)
Mumbai-400 012.)..Petitioner

Versus

1.State of Maharashtra)
through its Secretary,)
Tribal Development Department)
Mantralaya, Mumbai-400 32.)
2.Scheduled Tribe Certificate)
Scrutiny Commitee, Konkan)
Division, Thane through)
its Deputy Director (R))
and Member Secretary,)
having its office at Vedant)
Complex, 3rd Floor, Vartak)
Nagar Ward office,)
Near Kores Company,)
Vartak Nagar, Thane (West))
Dist. Thane.)
3.Secretary, Medical Education)
& Drugs Department, Govt.)

of Maharashtra, Mantralaya,)

Mumbai-32.)

4.Competent Authority and)

Director, Medical Education)

and Research having its)

Office at Dental College)

Building, St. George's)

Hospital, 4th Floor, Near)

CST, Mumbai-400 001.)

5.Secretary,High and Technical)

Education, Government of)

Maharashtra Mantralaya,)

Mumbai-400 032.)..Respondents

Mr. R.K. Mendadkar, for the Petitioner

Mr. N. Pandit, A.G.P. for Respondents.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 15TH JUNE,2006

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioner has filed this petition alleging that she belongs to a notified scheduled Tribe in the State of Maharashtra. An application is

already pending before the relevant Committee for verifying the Tribe Certificate of the petitioner. The petitioner in the order of merit is at Serial No.6 amongst the students of the ST community. The respondent State has made a Rule for admission to life sciences course whereby no admission will be granted unless the caste/tribe certificate is produced at the time of admission. Learned Counsel points out that this has been done only in case of Life Sciences Courses The very State in so far as Engineering and other courses has given time period of 12weeks from the date of admission to produce caste/tribe validity certificate.

. For the purpose of enquiry into caste validity the State of Maharashtra has constituted various committees. Judicial notice can be taken of the fact that these committees are over worked and not in a position to issue caste/tribe validity certificate within three months or a reasonable period of time. In these circumstances the rights of students who are otherwise meritorious and entitled to admission, cannot be defeated because of the inability to produce caste/tribe certificate at the time of admission. Apart from that, judicial notice can also be taken of the fact that we have come across several cases where students are first timers for admission in the professional courses and their parents are not aware that the caste/tribe certificate has to be kept ready to be produced at

the time of admission. The constitutional scheme of reservation meant for upliftment of backward section cannot be defeated by procedural or technical impediments. Effect has to be given to the constitutional mandate so that those students who are entitled to reservation get the benefit and are not tripped by procedural requirements.

. In these circumstances we think it appropriate that we issue some general direction as otherwise during this period, hundreds of petitions are filed by students who are denied admission or are threatened with cancellation of admission, because they are not in a position to produce the caste/tribe validity certificate in time. In the light of that the following order:-

1. The requirement of producing caste/tribe validity certificate at the time of admission or within 12 weeks of admission is directory and not mandatory.

2. If the students have already applied for caste/tribe certificate and the applications are pending before the relevant committee, then the institutions must grant provisional admission to such students. The admissions will be subject to the decision of the caste/tribe Scrutiny Committee. Under no circumstances will any student be entitled to claim equity to continue the studies if the caste/tribe certificate is rejected or not validated.

3. Considering what we have stated in the earlier part of the order, Rule 5 of the Information Brochure for admission to Health Sciences Courses for the academic year 2006-2007 is held to be directory..

4. The various Committees which have been entrusted the responsibility of deciding the caste/tribe validity, in so far as those applicants who have applied for admission to professional courses, to consider their cases on priority and dispose them of not later than six months from the date of the application.

5. The Chief Secretary of the State of Maharashtara to consider these observations in this order and to take necessary steps to give effect to them.

6. The Chief Secretary to the Government of Maharashtra to ensure that this part of the order is forwarded to the various Departments/Bodies entrusted with the responsibilities of admission.

7. The office to forward a copy of this order to the Chief Secretary, State of Maharashtra forthwith.

8. Rule made absolute accordingly. There shall be no order as to costs.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**